

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

MITCHELL KEITH GOODRUM,
Plaintiff,
v.
CITY OF FALLON, *et al.*,
Defendants.

Case No. 3:20-cv-00539-MMD-WGC
ORDER

Pro se Plaintiff Mitchell Goodrum filed a civil rights complaint under 42 U.S.C. § 1983. (ECF No. 1-1.) Goodrum has also filed an application to proceed *in forma pauperis* (“IFP”) and a motion for appointment of counsel. (ECF Nos. 3, 4.) Before the Court is the Report and Recommendation (“R&R” or “Recommendation”) of United States Magistrate Judge William G. Cobb (ECF No. 5), recommending that Goodrum’s IFP application be granted, motion for appointment of counsel be denied as moot, and that this case be dismissed without prejudice. Goodrum had until April 22, 2021 to file an objection. To date, no objection to the R&R has been filed. For this reason, and as explained below, the Court adopts Judge Cobb’s R&R and will dismiss this case without prejudice.

The Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party fails to object to a magistrate judge’s recommendation, the Court is not required to conduct “any review at all . . . of any issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1116 (9th Cir. 2003) (“De novo review of the magistrate judges’ findings and recommendations is required if, but *only* if, one or both parties file objections to the findings and recommendations.”) (emphasis in original); Fed. R. Civ. P. 72, Advisory Committee Notes (1983) (providing that the Court “need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”).

1 Because there is no objection, the Court need not conduct *de novo* review, and is
2 satisfied Judge Cobb did not clearly err. Here, Judge Cobb recommends Goodrum's IFP
3 application be granted as Goodrum's average monthly balance for the last six months
4 was \$0.03, and his average monthly deposits were \$0.03. (ECF No. 5 at 3.) Judge Cobb
5 further recommends Goodrum's complaint be dismissed because a § 1983 action for
6 damages from an unconstitutional conviction or sentence is improper until the conviction
7 or sentence has been invalidated. (*Id.* at 5-6.) This likewise applies to Goodrum's
8 fabrication of evidence claim. (*Id.*) The Court agrees with Judge Cobb. Having reviewed
9 the R&R and the record in this case, the Court will adopt the R&R in full.

10 It is therefore ordered that Judge Cobb's Report and Recommendation (ECF No.
11 5) is accepted and adopted in full.

12 It is further ordered that Plaintiff Goodrum's application to proceed *in forma*
13 *pauperis* (ECF No. 3) is granted. Given Goodrum's low balance, the Court will not require
14 Goodrum to make an initial payment. However, when Goodrum's prison account exceeds
15 \$10.00, Goodrum will be required to make monthly payments in the amount of 20% of the
16 preceding month's income credited to Goodrum's account until the \$350.00 filing fee is
17 paid. This is required even if a case is dismissed or is otherwise unsuccessful.

18 It is further ordered that Plaintiff Goodrum's motion for appointment of counsel
19 (ECF No. 4) is denied as moot.

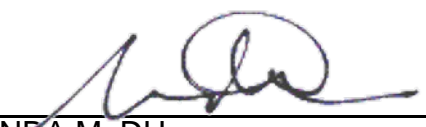
20 The Clerk of Court is directed to file Plaintiff Goodrum's complaint (ECF No. 1-1).

21 The Clerk of Court is further directed to send a copy of this order to the attention
22 of *Chief of Inmate Services for the Nevada Department of Corrections*, P.O. Box 7011,
23 Carson City, Nevada 89702.

24 It is further ordered that this case be dismissed without prejudice.

25 The Clerk of Court is directed to enter judgment accordingly and to close this case.

26 DATED THIS 27th Day of April 2021.

27 
28 MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE